different from our section 6(1)(a) with regard to first publication. Section 2(2) of the English Copyright Act, 1956 reads:

"Where an original literary, dramatic or musical work has been published, then, subject to the provisions of this Act, copyright shall subsist in the work... if, but only if, —

(a) the first publication of the work took place in the United Kingdom, or in another country to which this section extends."

The position with regard to cinematograph film is different, see section 13(1) and (2) of the English Act. Under subsection (1) the maker of the film must be a qualified person. Subsection (2) is "without prejudice to the preceding subsection."

Counsel for the plaintiffs has taken the further point that section 6 of the Act should be read with section 5. Section 5 specifies that the "author" must be a "qualified person", that is to say, "an individual who is a citizen of, or is a permanent resident in Malaysia".

There is no merit in this submission whatsoever. Sections 5, 6 and 7 of the Act are three distinct and different provisions in which copyright can be obtained. They are three alternative ways, separate and distinct in which copyright could be conferred. (See the opening words of each of the three sections: "Copyright shall be conferred *by this section*")

Discretion

The shops of all the five plaintiffs were raided by the police and those video tapes (which were thought to have infringed the copyright of the defendant) that were found on the premises were seized. Three of the directors of the 4th, 5th and 6th plaintiffs were arrested and later released on bail of $10,000 each. Two of the directors were subsequently charged before a Magistrate and their cases are pending.

In all these cases, I hold as a matter of law that criminal proceedings had already been commenced. I am of the view that this is not a proper case in which the discretion of the court should have been exercised to make the declaration sought for by the plaintiffs. I am fortified in this by the recent decision of the House of Lords in *Imperial Tobacco Ltd.* v. *Attorney-General.*[7]

Lord Lane said (at 487):

"Counsel appearing before your Lordships' House were unable to find any case in which a defendant in criminal proceedings already properly and not vexatiously instituted had applied for a declaration that the criminal proceedings were unfounded or based on a misapprehension as to the true meaning of the criminal statute. I do not find that dearth of authority surprising. It would be strange if a defendant to proper criminal proceedings were able to pre-empt those proceedings by application to a judge of the High Court whether sitting in the Commercial Court or elsewhere. What effect in law upon the criminal proceedings would any pronouncement from the High Court in these circumstances have? The criminal court would not be bound by the decision. In practical terms it would simply have the inevitable effect of prejudicing the criminal trial one way or the other.

Where there are concurrent proceedings in different courts between parties who for practical purposes are the same in each, and the same issue will have to be determined in each, the court has jurisdiction to stay one set of proceedings if it is just and convenient to do so or if the circumstances are such that one set of proceedings is vexations and an abuse of the process of the court. Where, however, criminal proceedings have been properly instituted and are not vexatious or an abuse of the process of the court it is not a proper exercise of the court's discretion to grant to the defendant in those proceedings a declaration that the facts to be alleged by the prosecution do not in law prove the offence charged."

What then are the facts to be alleged by the prosecution? There are many and this court would not know what they are. One thing is sure, the prosecution will have to prove the first publication in Malaysia and that such publication was made with the consent of the "author". It would therefore not be right to grant a declaration after criminal proceedings have started.

The application is therefore dismissed with costs.

Application dismissed.

Solicitors: *Skrine & Co.; Chooi & Co.*

J. SELVAM & ANOR. v. S. MEHTA & ANOR.

[O.C.J. (Abdul Hamid F.J.) April 2, 1980]
[Kuala Lumpur — Civil Suit No. 3 of 1980]

Landlord and Tenant — Distress — Appellants not landlord of respondents — Warrant of distress set aside.

The present appeal was against the decision of the learned Magistrate setting aside the Warrant of Distress on the ground that the appellants were not the landlord of the respondents. On February 22, 1979, the appellants obtained a Warrant of Distress for the movable property found on the ground floor of No. 40 Jalan Tuanku Abdul Rahman to recover a sum of $10,050 being 3 months' rent in arrears. The appellants claimed that they were owners and landlord of the said premises. They claimed that the respondents were their tenants at a monthly rental of $3,350.

On March 3, the respondents applied to set aside the order. They contended that they were not the tenants of the appellants but of Selvam Holdings (M) Sdn. Bhd.

The learned Magistrate found as a fact that Selvam Holdings were the chief tenants and also landlord of the said premises and the appellants were not, therefore, the proper party to apply for the issue of the Warrant of Distress.

Held, dismissing the appeal: (1) the learned Magistrate had arrived at a correct decision and it should not be interfered with. It was immaterial that the appellants were the registered proprietors of the said premises;

(2) the facts showed that at all material times Selvam Holdings were the chief tenants and in that capacity had held themselves out as landlord of the said premises; therefore, in so far as the tenancy was concerned it was strictly a matter between the respondents and Selvam Holdings and if a Warrant of Distress had to be applied for, it should have been at the instance of Selvam Holdings.

CIVIL SUIT.

G. Ambiavagar (Miss) for the appellants.

K.L. Rekhraj for the respondents.

Cur. Adv. Vult.

Abdul Hamid F.J.: The appeal is against the decision of the Magistrate at Kuala Lumpur on May 9, 1979 setting aside the Warrant of Distress on the ground that the appellants were not the landlord of the respondents.

The appellants obtained a Warrant of Distress for the movable property found on the ground floor

of No. 40, Jalan Tuanku Abdul Rahman, Kuala Lumpur (hereafter called the said premises) to recover a sum of $10,050 being 3 months' rent in arrears allegedly due to the appellants.

In the affidavit in support of the application the appellants averred that they are the owners and landlord of the said premises and the respondents, trading under the name and style of Sri Silver Emporium are the tenants of the appellants at monthly rental of $3,350.

The appellants alleged that the respondents were in arrears of rent for 3 months and have neglected to pay on demand.

Warrant of Distress was issued on February 22, 1979. On March 3, the respondents applied to set aside the order. It was contended that they are not the tenants of the appellants but of Selvam Holdings (M) Sdn. Bhd. since July 1976 paying the rentals to Selvam Holdings as evidenced from the receipts and vouchers annexed to the affidavit as exhibits.

The appellants filed an affidavit in reply stating that they are the registered proprietors of the said premises and are the majority shareholders of the Selvam Holdings (M) Sdn. Bhd. They said that the Selvam Holdings are occupying the 1st floor of the said premises and have been acting as agents in respect of collection of rental and maintenance of the said premises. The respondents, nonetheless, had dealt with the first named appellant. It is further stated that the tenancy commenced in 1976 and there was an agreement in writing signed by the first appellant.

At the hearing before the Magistrate the 1st appellant was cross-examined on oath and she stated that rentals were paid to Selvam Holdings since 1976 and not to the appellants. The respondents had not been told not to pay the rentals to Selvam Holdings. She admitted signing the receipts but had done so on behalf of Selvam Holdings. She also admitted that Selvam Holdings were her tenants and she herself is the managing director of that company. She further said that she did not inform the respondents that she was collecting as agents.

The document purporting to be a tenancy agreement between the appellants and the respondents was produced before the Magistrate, but its admission was objected to by counsel for the respondent on the ground that it was not signed, dated or stamped.

The learned Magistrate concluded that Selvam Holdings were the landlord of the said premises and ordered that Warrant of Distress be released.

In the grounds of judgment the Magistrate found as a fact that Selvam Holdings were the chief tenants and also landlord of the said premises and the appellants were not, therefore, the proper party to apply for the issue of the Warrant of Distress.

On appeal before me counsel for the appellants contended that the learned Magistrate has erred in failing to deal with the admissibility of the agreement. On record it is clear that the Magistrate rejected it for she never considered the document as part of the exhibit. Counsel for the appellants further contended that the document could be compounded under the relevant provision of the Stamp Ordinance and thereafter be admitted in evidence. Section 52 of the Stamp Ordinance prohibits the admission of such document but plainly it could be admitted in evidence under proviso (a) on payment of duty and penalty in accordance with section 43 or 47 of the Ordinance. In this regard the appellants ought to have urged the Magistrate to invoke the proviso but this they did not do. In any event the document, even if it was admitted, would have carried very little weight or none at all and certainly was insufficient to tilt in favour of the appellants. The document was neither signed nor dated.

In my view the learned Magistrate had arrived at a correct decision and it should not be interfered with. It is immaterial that the appellants are the registered proprietors of the said premises. The question is whether Selvam Holdings were the landlord. The facts do show that at all material times they were the chief tenants and in that capacity have held themselves out as landlord of the said premises.

Looking at the facts of this case as a whole, I form a distinct impression that the appellants conducted the whole affair in the manner they did, in all probability, with a view to attaining an objective otherwise proper. However, in so far as the tenancy was concerned it was strictly a matter between the respondents and Selvam Holdings and if a Warrant of Distress had to be applied for it should have been at the instance of Selvam Holdings.

For reasons I have stated I would, therefore, dismiss the appeal with costs.

Appeal dismissed.

Solicitors: *Ambiavagar & Co.; K.L. Rekhraj.*